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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4TH DAY OF JUNE 1998

BEFORE

THE HON'BLE Mr. JUSTICE H.L. DATTU

WRIT PETITION No. 7 7/1993.

BETWEEN:

V.P. Narayanaswamy
s/o. Peddappayyanna,
aged about 37 years,
working as Officer,
Dena Bank,
Kodihalli,
Bangalore.

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... PETITIONER

(By Sri P.S. Rajagopal, Adv.)

AND :

Dena Bank
a body constituted under
Banking Companies (Acqui-
sition and Transfer of
Undertakings) Act, 1970
having its Central Office
at Maker Towers, 'E' Cuffe
Road, Bombay - 400 005,
rep. by its Regional Manager
Dena Bank, Regional Office,
Bangalore.

... RESPONDENT

(By Sri C.S. Ramadas, Adv.)

This writ petition is filed under Article 226 of the Constitution with a prayer to declare that the order dated 25.06.1992 is illegal, nonest and unenforceable and etc.

This writ petition coming on for hearing this day, the Court made the following;

ORDER

An Officer of the respondent Dena Bank is before this court primarily questioning the

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communication received by him from the Regional Manager dated 11.12.1992. The said communication of the respondent is as under:

"We had communicated the revised fitment upon your promotion to officer's cadre with effect from August, 1988. Consequent upon the fitment recoveries were to be effected from April, 1992. The total amount to be recovered works out to Rs.3467/76. You are required to repay the amount immediately.

Please note from December, 1992 onwards your salary shall be on the revised fitment and so you may work out Income tax liability and advise deductions accordingly."

2. By the aforesaid order, the petitioner's pay has been revised and refixed and further two increments have been reduced. Apart from all these, a direction is also there for recovery of a sum of Rs.3467.76 ps. which is said to have been paid in excess.

3. Aggrieved by this order, petitioner is before this court in a petition under Art.226 of

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the Constitution. In support of the relief sought for in the writ petition, petitioner has stated as under:

According to the petitioner, he had joined the services of respondent Bank as a Clerk and by an order dated 26.8.1988 he has been promoted from Clerical post to that of Officers in Junior Management grade Scale I.

4. In the letter of promotion it has been indicated by the respondent as under:

I. Promotion would be effective from 1st August, 1988 provided he reports for duty at the place of posting/transfer and assumes responsibilities as an Officer on or before 14th September, 1988.

5. The other clause which is relevant for the purpose of this case is Cl.(6), which reads as under:

"6. His revised emoluments as an Officer in Junior Management Grade Pay Scale-I will be advised on receiving information about date of joining at the place of posting."

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6. Pursuant to the aforementioned promotional order, petitioner reported for duty on 5.9.1988 at K.G.Road Branch, Bangalore. Thereafter, the Personnel Manager of respondent Bank has informed the Manager of K.G.Road branch, Bangalore by their letter that in view of promotion granted to the petitioner as an Officer Junior Management Grade scale-I, he would be entitled for a sum of Rs.3275.72 as emoluments.

7. Petitioner has also stated in the writ petition that there was a revision of pay scale of the employees of the Bank with retrospective effect i.e. w.e.f. 1.11.1987. He has also asserted that on revision of pay scale as on 1st August, 1988, petitioner was drawing a sum of Rs.3848.07 ps. which is inclusive of annual increments and other allowances. To demonstrate this aspect petitioner has produced Annexure-G along with the writ petition docket which is dated 17.7.1992.


8. When things stood thus, the Regional Manager by his letter dated 25.6.1992 addressed to all the Branch Managers including K.G.Road Branch Manager has informed that in view of advise received by Indian Banks Association, the revised fitment in Officers' scale, petitioner would be

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entitled only a sum of Rs.2340/- as on 1.8.1988. Pursuant to this letter from the Regional Manager, petitioner has been informed by a letter dated 11.12.1992 that he would now only draw a sum of Rs.2340/- as an Officer in the respondent Bank and he will not be entitled two increments which had already been granted to him and further the excess amount in a sum of Rs.3467.77 ps., paid to him would be recovered from his salary. Aggrieved by this action of the respondent Bank, petitioner is before this court for the relief indicated by me already.


9. Sri P.S.Rajagopal, learned counsel for the petitioner contends that the respondent could not have issued the impugned letter/order revising the pay scale of the petitioner without notice and without affording an opportunity of hearing since the action of the respondents would involve civil consequences and violation of it would be opposed to rules of natural justice. Therefore submits that the action of the respondent Bank is arbitrary and illegal.

10. Per contra, Sri C.S.Ramadas, learned counsel for the respondent Bank would submit that the writ petition filed by the petitioner is not



maintainable before this court for the reason that the communication of the Regional Manager of respondent Bank dated 25.6.1992 and 11.12.1992 is in the nature of the administration action and since the uniform policy had been made by the respondent Bank, petitioner and similarly placed employees could agitate the rights before the respondent authorities itself by approaching them by proper representation. By saying so, learned counsel submits that this court should not interfere with the letters of respondent dated 25.6.1992 and 11.12.1992.


11. The administrative action of an authority is also amenable to writ jurisdiction, if the Court is satisfied that the administrative action of the respondent Bank is arbitrary and is opposed to principles of natural justice. It is not in dispute that after the petitioner was promoted to the post of Junior Management Grade Scale -I Officer, respondent by their letter dated 19.8.1988 had given the petitioner fitment as an Officer and thereafter, w.e.f., 1.11.1987 the pay scale of the petitioner had also been revised and pursuant to these orders, petitioner was drawing the salary and other allowances as admissible. In my view, if for any reason, the respondents wanted to



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revise or modify or annul their earlier orders made in fixing the petitioner's salary, as a Junior Management grade Scale-I, the same should have been done preceded by issuing a notice to the petitioner and by affording an opportunity of hearing to him for the reason by fixing the salary and by allowing the employees concerned to draw that salary, he gets a right to draw that salary. That right cannot be withdrawn without a notice and without affording an opportunity of hearing to the person who would be effected by such adverse order. After all, administrative power ^{is} ~~in~~ a democratic set up is not allergic to fairness in action.

12. In that view of the matter, the impugned letter dated 25.6.1992 issued by the Regional Manager to the petitioner and the letter dated 11.12.1992 giving effect to the letter dated 25.6.1992 are set aside and liberty is reserved to the respondent Bank to refix the salary of the petitioner if they so desire only after due notice to the petitioner and affording an opportunity of hearing to the petitioner.



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13. With these observations, petition is disposed off and rule made absolute. All other contentions raised by both the parties are left open. Ordered accordingly.

Sd/-
JUDGE



CSG.